

# DRAFT

Agreement No.

AGREEMENT  
between  
THE NATIONAL PARK SERVICE  
and  
YORK COUNTY, VIRGINIA

This Agreement is made and entered into between York County (hereinafter “County”) and the U.S. Department of the Interior, National Park Service (hereinafter “NPS”), acting through the Superintendent, Colonial National Historical Park.

## Article I. BACKGROUND AND OBJECTIVES

The NPS and the County have a long-standing history of cooperation on projects to provide for public use of resources at Colonial National Historical Park and the adjacent County facilities. Revitalization of the Yorktown Waterfront is a key component of York County’s Yorktown Master Plan (1993) which is consistent with the General Management Plan for Colonial National Historical Park. At the present time, the significant shoreline erosion is occurring on public areas along the Waterfront near Yorktown Creek. In addition, a pedestrian walkway is needed to provide safer access to this public area since the only means of public pedestrian ingress and egress is along Water Street. The NPS and the County intend to enter into a land exchange which will include the several parcels of property currently owned by the NPS, including property referenced below and shown on Exhibit A attached hereto.

This Agreement will authorize the County to construct and operate improvements on Park property to help address the shoreline erosion and public pedestrian safety problems pending the completion of the land exchange, and will authorize the County to contribute to the project the facilities and services described below in Article III.B. This Agreement will terminate upon completion of the land exchange.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

## Article II. AUTHORITY. 16 U.S.C. §1a-1.

## Article III. STATEMENT OF WORK

### A. The National Park Service:

1. Hereby grants to the County a license for the construction and operation of shoreline erosion structures and a pedestrian walkway, as described below in this Agreement, on property (“the property”) owned by the United States and located situated between Water Street and the York River in the Yorktown Creek Area in Yorktown, as such property is shown on Exhibit A attached hereto. The NPS also grants authority to the County to determine the dates and hours that the property and improvements will be open for public use.

2. Agrees to provide advice to the County to ensure this project meets National Park Service standards and compliance requirements.

### B. York County Agrees to:

# DRAFT

1. Obtain or provide funding to design, construct and operate at its sole expense shoreline erosion structures and a pedestrian walkway on the property situated between Water Street and the York River in the Yorktown Creek Area in York County, Virginia, as described in the attached Exhibit A which is incorporated herein by reference. County responsibility will include funding for any regulatory or compliance activities required for this project and for preparing and managing all contracts required for this work.

2. Supervise the construction of this project to conform to the construction plans, approved in writing by the National Park Service.

3. Maintain and operate the subject property to provide for its safe and effective use by the general public during dates and hours determined by the County.

Article IV. TERM OF AGREEMENT. This Agreement will become effective upon approval by both parties and, unless earlier terminated pursuant to Article VII, this Agreement will expire five years from the date of approval. Upon mutual agreement by both parties, this agreement can be renewed at that time for additional successive periods of up to five years each.

## Article V. KEY OFFICIALS (NPS AND PARTNER)

A. The key contact for the National Park Service is the Superintendent, Colonial National Historical Park.

B. The key contact for York County is the County Administrator.

Article VI. LIABILITY. This agreement is made upon the express condition that the United States of America, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury to any person or property of any kind whatsoever, whether to the person or property of the County or third parties, from any cause whatsoever arising from any activities conducted pursuant to the terms of this Agreement, and the County hereby covenants and agrees to indemnify, defend, save and hold harmless the United States of America, its agents and employees from all such liabilities, expenses and costs on account of or by reason of any injuries, deaths, liabilities, claims, suits or losses however occurring or damages arising out of the same, but only to the maximum extent allowed by the laws of the Commonwealth of Virginia.

The County agrees to obtain Comprehensive General Liability Insurance naming the “United States of America” as an “Additional Insured for purposes of any claims which result directly from the construction or operation of the parking area described in this Agreement”, provided that the United States shall not be liable for the payment of any premium or assessment.

To the extent work is to be provided by a non-governmental entities or persons, York County will require that entity or person to:

A. Procure public and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of

# DRAFT

Three Million Dollars (\$3,000,000) for any number of claims arising from anyone incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk.

Prior to beginning the work authorized herein, the contractor shall provide the NPS with confirmation of such insurance coverage; and

B. Pay the United States the full value for all damages to the lands or other property of the United States caused by such person or organization, its representatives, or employees; and

C. Indemnify, save and hold harmless, and defend the United States, its agents and employees against all fines, claims, damages, losses, judgments, and expenses arising out of, or from, any omission or activity of such person organization, its representatives, or employees arising out of or in any way connected with the activities authorized pursuant to this Agreement, but only to the maximum extent allowed by the laws of the Commonwealth of Virginia.

Article VII. TERMINATION. If either party fails to observe any of the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period. The National Park Service may terminate this Agreement for the convenience of the government, at any time, when it is determined to be in the best interest of the public to do so. The effected parties shall be notified in writing within 5 working days following the termination.

## Article VIII. REQUIRED CLAUSES

A. NON-DISCRIMINATION. All activities pursuant to this Agreement and the provisions of Exec. Order No. 11246, 3 C.F.R. 339 (1964-65) shall be in compliance with the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, national origin, handicap, religion or sex in providing for facilities and services to the public.

B. PUBLIC LAWS: Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose of or intent of any Act of Congress or the laws of the District of Columbia establishing, affecting, or relating to the Agreement.

## C. APPROPRIATIONS

1. This Agreement and the obligations of the Park hereunder are subject to the availability of funds, and nothing contained in this Agreement shall be construed as binding the Park to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.

2. This Agreement and the obligations of the County hereunder are subject to the availability and appropriation-of funds, and nothing contained in this Agreement shall be construed as binding the County to expend in any one fiscal year any sum in excess of appropriations made by the Board of Supervisors, for the purposes of this

# DRAFT

Agreement for that fiscal year, or as involving the County in any contract or other obligation for the further expenditure of money in excess of such appropriations.

D. DIRECT BENEFIT CLAUSE. No Member of, Delegate to, or Resident Commissioner in, Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.

## Article IX. SPECIAL CLAUSES

A. Work will not commence on this project until the Park has provided written approval of all plans and specifications for the project.

B. The County will be responsible for preparing an Environmental Assessment meeting Park specifications for this project, and will provide documentation for the park's submission of the project to the State Historic Preservation Office for Section 106 compliance.

C. Plans and specifications for this project must meet all requirements for the Chesapeake Bay Preservation Act and applicable state and county regulations concerning storm water management.

D. This project must comply with the National Historic Preservation Act as amended and National Park Service guidelines for preservation and protection of cultural resources. If any historic artifacts are uncovered during any County operations on the area described in this Agreement, said work will halt immediately until the area can be surveyed by the Superintendent or a member of his staff. All artifacts unearthed on Park property are the property of the United States Government.

E. The County shall take adequate measures as directed and approved by the Superintendent to prevent or minimize damage to adjacent Park resources as a result of this project. This may include but not be limited to restoration of damaged vegetation, soil conservation and protection measures, and erosion and sedimentation controls. All work on Park lands shall comply with Virginia Erosion and Sedimentation regulations and shall be completed to the satisfaction of the Superintendent.

F. The County agrees, during all work on or maintenance of the parking area to provide and maintain proper signs, barriers and other means of warning motorists and pedestrians of the dangers in a construction zone as specified in the Manual of Uniform Traffic Control Devices.

G. The Park shall be notified by telephone no less than 24 hours prior to the start of construction or maintenance work on Park lands, by telephoning the Chief Ranger's office at 898-2425.

H. The use of pesticides and/or herbicides in maintenance activities on Park lands is strictly prohibited, unless prior written approval has been obtained from the Park.

I. Should the County or the NPS determine in the future that continued use of the pedestrian walkway should not continue, for any reason, the County will be responsible for removal of the constructed materials and restoration of the site to its original grade (or to a grade approved in writing by the NPS) and restoring vegetation cover based on plans approved by the park.

## Article X. AUTHORIZING SIGNATURES

**DRAFT**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives the dated indicated below.

National Park Service

York County

By \_\_\_\_\_  
Alec Gould, Superintendent  
Colonial National Historical Park

By \_\_\_\_\_  
County Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date